IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

SECOND APPEAL NO.432 OF 1990

Yashwant Bandu Thorat
since deceased by his L.Rs.
1) Sundrabai Wd/o Yashwant Thorat,
since deceased by her son

(a) Rajendra Yashwant Thorat
R/at & post Korti,Tal Karad,
Dist. Satara.,

2. Shivram Bandu Thorat.
3. Shankar Bandu Thorat,
since deceased through his heirs.
(a) Smt. Kashibai shankar Thorat.
(b) Chandrakant Shankar Thorat.
Both residing at & post Korti,
Tal. Karad, Dist. Satara.
(c) Sou. Pushpatai Hindurao Yadav
R/at & post Saspade,
Tal. & Dist.Satara.
(d) Sou. Premalatai Sambhaji Pawar
at & post Wade Khed,
Tal. & Dist. Satara. ...Appellants.

Vs.

Vishnu Balvant Jadhav
Occupation Agriculturist.
R/at Korti, Tal. Karad,
Dist.Satara. ..Respondent.

Smt. S.S. Deshpande with Mr. B.P.Apte for the appellants.

Mr. Narendra V. Walawalkar for respondent.

CORAM : ANOOP V.MOHTA J.
DATE : 24TH NOVEMBER, 2005.

ORAL JUDGMENT

. The suit filed by the original plaintiff for redemption, subsequently amended into suit for specific performance of contract based on the sale deed in favour of defendant dated 22/4/1963. Both the Courts after considering the rival contentions dismissed the suit for specific performance.

2. Present second appeal was admitted on 9/10/1990 on following question of law.

"Whether the lower Appellate Court erred in law in refusing the decree for specific performance on the ground that the sale could violate the provisions of section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948."

The said question of law has a foundation of section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short BTAL Act), whereby, there is a mandatary bar and restriction on transfer of land by purchase or sale under this Act without following the provisions of the Act. This provision of law has been considered by both the Courts while rejecting the suit for specific performance of contract.

3. Heard Mrs.S.S. Deshpande, the learned Counsel appearing for the appellants and Mr. Walawalkar, the learned Counsel appearing for the respondent. Based on synopsis and written notes, the additional grounds were allowed to raised as a substantial question of law, as under;

"Whether the respondent-defendant is estopped by the principal of estoppel from challenging the validity of the transaction which is the foundation of his title and whether he is further estopped from challenging the agreement to reconvey on the same ground?

"Whether the Courts below exceeded their jurisdiction by going beyond the directions given by this Hon’ble Court in CRA 66/75 dt. 22.8.1975?"

All these questions, need no detail discussion in view of the statutory bar created under section 43 of BTAL Act. Admittedly, there is no procedure or steps taken to revalidiate the said transaction as contemplated under section 84A of BTAL ACT, whereby the Collector as provided, has power to validate the invalid transaction

even it is made in contravention of section 43, 63 and 64 of the Act.

4. The principle of granting specific relief is based on the basic agreement dated 22nd April, 1963. Admittedly both the Courts refused to grant any relief in favour of the appellant. The aspect of grant of specific performance cannot be overlooked without referring to the settled principle of law, in so far as, specific performance of contract in question. It is a discretionary relief. Such discretionary relief in the facts and circumstances of the case, and after considering the rival contentions including substantial question of law, as raised above, nowhere justify to interfere with the concurrent findings given by the Courts below, substantially on the foundation of section 43 of BTAL Act. This finding is correct.

5. In my view, also therefore, the appellate Court was right in law in refusing the decree for specific performance on the ground that the sale violated section 43 of BTAL Act. If this is so, there is no question of extension of such principle of law in such matters. Both the added grounds also need no further discussion.

On the same footing there is no question of granting any order and decree in favour of the plaintiff, in view of the specific bar, under section 43 of BTAL Act. Thus in no way it can be said that the Courts below exceeded their jurisdiction by going beyond the directions given by this Court in CRA 66/1975, dated 22.8.1975. There is no estoppel against the law. Both the Courts have considered this aspect also while passing the impugned Judgements and orders. Therefore, the Courts below have committed no wrong in dismissing the suit for specific performance.

6. Taking all this into account, present Second Appeal is dismissed.

[ANOOP V. MOHTA, J.]